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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B5

DATE: APR 10 2012 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a cardiologist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B)Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on May 12, 2010. An accompanying *curriculum vitae* listed four pages of "professional distinctions[,] honors & awards," including professional certifications, appointments, class rankings, test scores, and other artifacts from the petitioner's ongoing training. The petitioner listed the following "research interests":

- Investigation of therapeutic targets to decrease the damage from heart attack and heart failure. Developing drugs based on these targets.
- Myocardial ischemia-reperfusion injury
- Congestive heart failure and underlying mechanisms
- Cell Death in heart disease (myocardial infarction and heart failure)

- Relationship between various forms of cell death like apoptosis, necrosis and autophagic cell death.
- Role of mitochondrial injury in cell death
- Mechanisms of action of hydrogen sulfide and its role in cardiovascular diseases.
- Diabetes and cardiovascular disease

The petitioner submitted a substantial quantity of documentation regarding his treatment of patients in a clinical setting. Such work lacks national scope because it provides direct benefit to only one patient at a time, and a clinical physician can only treat a limited number of patients. Thus, like the efforts of one attorney or one school teacher, the efforts of one physician "would be so attenuated at the national level as to be negligible." *NYSDOT*, 22 I&N Dec. 217, n.3. The national scope of the petitioner's work lies in his activity as a researcher, publishing peer-reviewed articles with the potential to influence the field.

Several witnesses discussed the petitioner's research work in varying degrees of technical detail Dr. [redacted], associate professor at All India Institute of Medical Science, New Delhi, stated that the petitioner's "clinical and research expertise make him an invaluable asset not only to the United States but also to the entire world."

Professor [redacted], now at Emory University School of Medicine, was previously one of the petitioner's mentors at Albert Einstein College of Medicine (AECM), Bronx, New York. Prof. [redacted] stated that the petitioner "is filling the gap between available therapy to treat heart disease and the need to identify new therapeutic targets."

Professor [redacted] now at Thomas Jefferson University, Philadelphia, Pennsylvania, was previously one of Prof. [redacted] former collaborators. Prof. [redacted] called the petitioner's research "groundbreaking" and "revolutionary," and noted "the numerous citations" of the petitioner's published work.

AECM Professor [redacted] stated that the petitioner's "research addresses for the very first time the relative contributions of different types of heart muscle cell death in myocardial infarction and heart failure."

Dr. [redacted] director of AECM's cardiology fellowship training program, praised the petitioner's "revolutionary" research and recounted an incident in which the petitioner successfully diagnosed a patient's serious medical condition.

Professor [redacted] of the University of Manitoba in Winnipeg, Canada, stated that the petitioner "has led pioneering research projects throughout his career. Indeed, he has published some of the leading investigations on myocardial infarction (heart attack) and heart failure and more particularly their prevention and treatment options."

Professor [redacted] of the University of Louisville, Kentucky, stated that the petitioner's "articles have been cited over 50 times in some of the most prominent national and international journals in the field."

The petitioner submitted copies of his published work, and evidence of 61 citations of that work.

On October 29, 2010, the director issued a notice of intent to deny the petition. In that notice, the director quoted from the witness letters and stated that the petitioner could not establish eligibility for the waiver simply by emphasizing the importance of cardiology as a specialty, or by claiming that the specialty is so inherently difficult that only the best physicians successfully practice it.

In response, the petitioner submitted a two-page summary entitled "Significance of my research contributions." A brief excerpt follows:

> **ARC (Apoptosis repressor with caspase recruitment domain) and heart failure:** ARC is an endogenous inhibitor of both extrinsic and intrinsic pathways of apoptosis (regulated form of cell death). Cardiac myocyte death from apoptosis and necrosis has been shown to play a crucial role in pathogenesis of myocardial infarction and heart failure. We demonstrated that cardiac specific over expression of ARC reduces myocardial infarct size following myocardial ischemia-reperfusion injury. Moreover, it reduces mortality and reduces left ventricular dysfunction in rodent model of heart failure. Our study has established the cardioprotective effects of ARC and brings into focus the role of anti-cell death therapy in myocardial infarction and heart failure.

The petitioner submitted copies of his published articles, and a citation index, showing 110 independent citations of his published work. The petitioner also submitted other documentation of his work.

The director denied the petition on December 15, 2010. Much of the language in that decision matches the wording of the notice of intent to deny the petition. The director stated that many of the witnesses emphasized a labor shortage, which is a poor argument for the national interest waiver because the labor certification process addresses such shortages. The director also stated that the petitioner did not show that he developed new technology used by cardiologists at other institutions.

On appeal, counsel contends that the petitioner had submitted sufficient evidence to distinguish himself from others in his specialty. Counsel notes that the petitioner had documented over 120 citations of his published work. This figure includes several self-citations, but the great majority of the citations are independent. The director, in the denial notice, did not address the citation data at all. The director tended to focus on the petitioner's clinical work rather than his published research. Counsel's reference to the overlooked citations is, therefore, a substantive and non-trivial assertion on appeal.

The petitioner has verified that he is still engaged in cardiology research, and will continue his training at the Cleveland Clinic in Ohio beginning in June 2012. The latest citation figures from March 2012 show a total of over 300 citations of his published work, with four articles cited over 50 times each. The ongoing, very substantial growth in the citation figures continues a pattern of frequent citations that predates the filing of the petition, and shows that the influence of the petitioner's published research

continues to spread and multiply. The director did not consider this aspect of the petitioner's work, and in the face of this significant omission the denial decision cannot stand.

Given the objective evidence of the petitioner's influence in his field, the AAO finds that the benefit of retaining the petitioner's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.